

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
FrontierVision Operating Partners, LP d/b/a)	Flemingsburg, KY 0042
Adelphia Communications Corp.)	
)	
)	
Petition for Reconsideration of the Certification of)	
the City of Flemingsburg, Kentucky to Regulate)	
Basic Cable Rates)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 2007

Released: July 23, 2007

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. FrontierVision Operating Partners, LP d/b/a Adelphia Communications Corp. (“Adelphia”)¹ pursuant to Section 76.911 of the Commission’s rules,² has filed this petition with the Commission for reconsideration of the certification of the City of Flemingsburg, Kentucky (the “City”) to regulate basic cable rates. Adelphia argues that the community of Flemingsburg is subject to competing provider effective competition, and therefore, ineligible for certification to regulate basic cable rates. No opposition was filed. Finding that Adelphia is subject to effective competition in Flemingsburg, we grant the petition.³

¹ Comcast Corporation and Time Warner acquired the assets of Adelphia Communications Corporation in 2006. *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors and Transferors to Comcast Corporation (subsidiaries), Assignees and Transferrees; Comcast Corporation, Transferor, to Time Warner, Inc.; Transferree; Time Warner, Inc., Transferor, to Comcast Corporation, Transferree*, 21 FCC Rcd 8203 (2006). As part of that proceeding, the parties requested that the Commission's grant of its consent to the transactions include and accommodate, as appropriate, applications that will have been filed by such licensees relating to such cable systems that are pending at the time of the consummation of the transactions. In this matter, we also will take that to include pending petitions for effective competition. Therefore, the action we take in this proceeding will transfer to the successor-in-interest, either Comcast or Time Warner, as it relates to these Franchise Areas.

² 47 C.F.R. §76.911.

³On February 23, 2007, the Commission sent letters to various cable operators, including FrontierVision in the above-captioned matter (FrontierVision Operating Partners, Flemingsburg, KY 0042), informing them of a deficiency
(continued...)

II. BACKGROUND

2. Section 623(a)(4) of the Communications Act permits local franchising authorities to become certified to regulate the basic cable service and associated equipment rates of cable operators within their jurisdictions who are not subject to effective competition.⁴ For purposes of the initial request for certification, franchising authorities may rely on the presumption that cable operators are not subject to effective competition, unless the franchising authority has actual knowledge to the contrary.⁵ Certification becomes effective 30 days from the date of filing, unless the Commission finds that the franchising authority does not meet the statutory certification requirements.⁶ Cable operators may challenge the certification of a local franchising authority by filing a petition for reconsideration.⁷ Rate regulation is automatically stayed pending review of a petition for reconsideration alleging effective competition.⁸ Cable operators bear the burden of proving the existence of effective competition and such demonstrations must be made using household and subscriber data for the authorized franchise area.⁹

III. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the

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in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association ("SBCA") report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission's letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petition. No opposition to Mediacom's filing has been received by the Commission.

⁴Communications Act § 623(a)(4), 47 U.S.C. § 543(a)(4).

⁵47 C.F.R. § 76.910(b).

⁶47 C.F.R. § 76.910(e). Certification becomes effective unless the Commission determines that: (1) the franchising authority will not adopt and administer rate regulations that are consistent with the Commission's regulations; (2) the franchising authority lacks the legal authority to adopt, and the personnel to administer, rate regulation; (3) procedural laws and regulations, applicable to rate regulation proceedings by the franchising authority do not provide a reasonable opportunity for the consideration of the views of interested parties; or (4) the cable system in question is subject to effective competition. 47 C.F.R. § 910(b). *See also* Communications Act § 623(a)(4), 47 C.F.R. § 543(a)(4).

⁷47 C.F.R. §§ 1.106, 76.911; *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631, 5693 (1993) ("Rate Order").

⁸47 C.F.R. § 76.911(c)(1).

⁹*See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, First reports on reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, 9 FCC Rcd 1164, 1180 (1993); 47 C.F.R. § 76.915(a).

households in the franchise area.¹⁰ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. (“DirecTV”) and DISH Network (“Dish”) is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.¹¹ The two DBS providers’ subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during this period.¹² In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the City are DBS subscribers, we conclude that the population of the City may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.¹³ We further find that Adelphia has demonstrated that the City is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Adelphia has submitted to the Commission data contained in a Satellite Broadcasting and Communications Association (SBCA) Effective Competition Tracking Report to confirm that it is the largest MVPD in the City.¹⁴ Adelphia calculates DBS subscribership in these Franchise Areas based on 2000 Census household data and an SBCA Effective Competition Tracking Report reflecting the number of DBS subscribers within the specified zip code associated with the cable communities. Based upon the aggregate DBS subscriber penetration level, calculated using the 2000 Census household and SBCA data, we find that Adelphia has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the City.¹⁵ Based on the foregoing, we conclude that Adelphia has submitted sufficient evidence demonstrating that its cable system serving Flemingsburg, Kentucky is subject to competing provider effective competition.

¹⁰ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

¹¹ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹² *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

¹³ *See* 47 C.F.R. § 76.905(g).

¹⁴ Mediacom Petition at 6.

¹⁵ Based on the SBCA data, there are 425 DBS subscribers in the City and 1,294 households; 425 DBS subscribers divided by 1,294 Flemingsburg households equals 32.84 percent.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition for reconsideration filed by FrontierVision Operating Partners, LP d/b/a Adelphia Communications Corp. challenging the certification of Flemingsburg, Kentucky to regulate basic cable rates **IS GRANTED**.

6 **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any local franchising authorities overseeing FrontierVision Operating Partners, LP d/b/a Adelphia Communications Corp. **IS REVOKED**.

7. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Deputy Chief, Media Bureau

¹⁶47 C.F.R. § 0.283.